



28 APR 2004

A10

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Henry C. Query Jr.
504 S. Pierce Avenue
Wheaton, IL 60187

In re Application of :
GATHERAR, Nicholas et al. :
Application No.: 09/890,900 : DECISION ON
PCT No.: PCT/GB00/00462 :
Int. Filing Date: 10 February 2000 : PETITION
Priority Date: 11 February 1999 :
Attorney Docket No.: FMCE-P067 US : UNDER 37 CFR 1.181
For: SUBSEA COMPLETION :
APPARATUS :

This decision is in response to "Renewed Petition Under 37 CFR 1.181," filed with the United States Patent and Trademark Office on 11 September 2003.

BACKGROUND

On 10 February 2000, applicants filed international application PCT/GB00/00462. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 17 August 2000. On 31 August 2000, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 13 August 2001 (11 August 2001 was a Saturday).

On 06 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 13 September 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 18 January 2002, applicants submitted a request for a refund.

On 03 December 2002, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements mailed 13 September 2001.

On 27 December 2002, applicants submitted a petition under 37 CFR 1.181, accompanied by an executed declaration.

On 01 August 2003, the Office mailed Decision On Petition Under 37 CFR 1.181 dismissing applicant's petition without prejudice.

On 11 September 2003, applicant submitted a renewed petition under 37 CFR 1.181.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) was previously satisfied. Item (2) has now been satisfied.

Item (3) has not been satisfied. Applicant submitted the docket record reflecting only this application. The docket record must show all replies docketed for the day on which a response was due for office action that applicant alleges was not received, namely 13 November 2001. MPEP 711.03(c).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains abandoned.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459